

BEFORE THE ARIZONA CORPORATION COMMISSION RECEIVED

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Arizona Corporation Commission  
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**IN THE MATTER OF U S WEST ) DOCKET NO T-00000A-97-0238**  
**COMMUNICATIONS, INC.'s COMPLIANCE )**  
**WITH SECTION 271 OF THE )**  
**TELECOMMUNICATIONS ACT OF 1996 )**

In its initial comments regarding the Staff's Second Report, filed July 18, 2003, Eschelon Telecom, Inc. brought to the Commission's attention a significant change in the manner in which Qwest provides DS1 capable loops. Simply by removing a single word from a provisioning document without any authority from either the Commission or the Federal Communications Commission (FCC) to do so, Qwest has increased the costs to its competitors for DS1 capable

loops, failed to process orders, and delayed the provisioning of such loops; and, in doing so, has materially impeded the ability of its competitors to service customers.<sup>1</sup>

Eschelon describes accurately what Qwest has done. Qwest's procedures for requesting construction in connection with certain Unbundled Network Elements are set forth in a Qwest document entitled "Competitive Local Exchange Carrier (CLEC) Requested Unbundled Network Elements (UNE) Construction (CRUNEC)." Pursuant to that document, Qwest did not impose construction charges on requests that could be resolved through facility work or assignments. Among the specific exclusions from CRUNEC construction charges was the following:

Incremental Facility Work: Completing facilities to an end-user's premises (e.g., Conditioning, place a drop, add a Network Interface Device (NID), Central Office (CO) tie pairs, field cross connect jumpers, or card in existing Subscriber Loop Carrier systems at the CO and Remote Terminal. (emphasis added)

Thus, line conditioning historically had not been subject to "construction" charges (which makes abundant sense given that no construction occurs with line conditioning). Without Commission authority or approval and without change in Qwest's Statement of Generally Available Terms and Conditions (SGAT) or in any interconnection agreement between Qwest and any CLEC (including MTI), Qwest quietly removed the critical word "conditioning" from the above-quoted portion of its CRUNEC document. As a result, Qwest has begun to impose "construction" charges for removing from loops provided as UNEs bridge taps, load coils, low pass filters and range extenders. Such removal is necessary for the loops to be suitable for high speed switched wireline telecommunications capability. Such removal does not require Qwest to engage in "construction" in any sense of that word or to incur "construction" costs which may be passed on to its UNE customers.

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<sup>1</sup> This situation is described in detail in Eschelon's July 18 comments at pp. 4 – 11.

As Eschelon noted in its comments, Qwest's quiet removal of one critical word and resulting increase in the charges for conditioned loops and resulting delay in provisioning orders which do not include CRUNEC "construction" requests occurred almost simultaneously with Qwest's receipt of Section 271 authority in several states. Qwest has not explained nor can it explain how removal of load coils, bridge taps, low pass filters and range extenders suddenly changed from "incremental" facility work to significant construction projects requiring payment of new, unauthorized and wholly unexpected additional fees which Qwest creatively has named "Quote Preparation Fee for Simple Facility Rearrangements." Stated simply, what Qwest has done through the guise of deleting the word "conditioning" from the list of exclusions contained in its CRUNEC document is to require CLECs to pay special fees to Qwest simply to provide those CLECs with price quotes to have done what Qwest is obligated to do under the Communications Act and the FCC's rules governing unbundled network elements – "condition" loops to make them suitable for high speed switched telecommunications. As Qwest itself has candidly acknowledged, it has a "concrete specific legal obligation to provide all types of loops with their attendant functions, features, and capabilities."<sup>2</sup>

These quote preparation fees are not insubstantial. The Quote Preparation Fee being charged by Qwest is \$1,685 per DS1 capable loop order. Of even greater importance than these additional charges which are unwarranted and unauthorized, Qwest's treatment of line conditioning as construction requiring "preparation" of price quotes has caused substantial delays, often in excess of 100 days, in the processing time for new facilities orders. Like Eschelon, MTI has experienced numerous facilities order rejections in the few months following this change. As a result, MTI has been unable to deliver timely service to its customers. It is

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<sup>2</sup> See Checklist Item 4 Unbundled Loops Rebuttal Affidavit of Jean M. Liston, Qwest Corporation, filed with the Commission February 19, 2001 in this docket, at 6.

difficult to imagine any conduct of any incumbent local exchange carrier that is more anticompetitive and more violative of the letter and the spirit of the 1996 Telecommunications Act than prolonged delays in fulfilling CLEC facility orders under the guise that such orders must be treated as "construction projects" for the simple removal of certain facilities when such removal is necessary in order for the unbundled loops to be suitable for high speed switched telecommunications.

Qwest's sudden and unauthorized decision to impose construction charges and dilatory price quote preparation procedures on loop conditioning within weeks of receiving initial Section 271 authorizations for other in-region states is all the more remarkable in light of testimony filed by Qwest in state Section 271 proceedings. For example, on January 19, 2001, Qwest submitted the direct testimony of one of its employees, Jean M. Liston in the Seven State 271 Collaborative Process. That testimony was offered for the express purpose of demonstrating Qwest's purported compliance with item no. 4 of the Competitive Checklist codified at Section 271(c)(2)(B) of the Communications Act. Qwest witness Liston testified that Qwest would condition loops to support CLEC DS1 capable services and explained loop conditioning as follows:

Basically, loop conditioning is the term used to describe the process of removing load coils, bridge taps, and any other devices from existing copper loops that would negatively impact the transmission of a digital signal. In many cases, the data portion of the loop will not work correctly if there are load coils or certain amounts of bridge taps on the loop. Qwest provides CLECs with Loop Conditioning for xDSL services upon request.<sup>3</sup>

Indeed, the witness acknowledged accurately in the testimony that the Federal Communications Commission mandated loop conditioning in its First Report and Order in CC

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<sup>3</sup> Testimony of Jean M. Liston, Qwest Corporation, Seven State 271 Collaborative Process, submitted January 19, 2001 at 18.

Docket No. 96-98.<sup>4</sup> In short, Qwest's testimony submitted as part of its campaign to win Section 271 relief described loop conditioning, and acknowledged that it was obligated to provide such conditioning as part of its obligation to provide DS1 capable loops. Conspicuously absent from that testimony and from all other filings submitted to the Commission prior to April 2003 is any indication of Qwest's intention to commence imposing construction including price quote, charges and procedures on such loop conditioning on its competitors once it began to win Section 271 authorization. Neither is there any reference to be found in any FCC decision which provides any support whatsoever for the novel proposition that line conditioning constitutes special construction of such a nature as to warrant special procedures, price quote preparation fees, and prolonged provisioning delays.<sup>5</sup>

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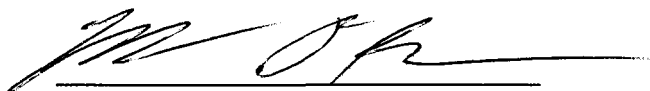
<sup>4</sup> Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 (*First Report and Order*), 11 FCC Rcd 15499 (1996).

<sup>5</sup> MTI does not dispute that that Qwest has been authorized by the FCC to impose a TELRIC-based charge for line conditioning. It has that authority and it does charge for conditioning. However, it does not have the authority to impose price quotation and special construction fees in addition to the TELRIC-based conditioning charges.

In considering whether Qwest has complied with the requirements of Section 271, including the Competitive Checklist elements codified at Section 271(c)(2)(B) of the Communications Act, the Commission should be mindful of this latest effort by Qwest to materially increase the charges for unbundled DS1 capable loops. Point no. 4 of the Competitive Checklist is "local loop transmission from the central office to the customer's premises, unbundled from local switching, or other services." Unless and until Qwest abandons its policy of imposing "construction" and price quotation charges for line conditioning, it cannot be found to have fulfilled the requirement codified at Section 271(c)(2)(B)(iv) – point 4 of the checklist.

Respectfully submitted,

**MOUNTAIN TELECOMMUNICATIONS, INC.**

A handwritten signature in black ink, appearing to read "M. Brecher", written over a horizontal line.

Mitchell F. Brecher

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July 25, 2003

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing Reply Comments of Mountain Telecommunications, Inc. Regarding Staff's Second Report on all parties of record in these proceedings by mailing a copy thereof, properly addressed with first class postage prepaid to the following:

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